

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

TVPX ARS, INC., as Securities Intermediary
for CONSOLIDATION WEALTH
MANAGEMENT, LTD., on behalf of itself
and all others similarly situated,
Plaintiff,

v.

Civil Action No. 3:18-cv-637-JAG

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant.

ORDER

This matter comes before the Court on the plaintiff's notice and motion to extend the stay. (Dk. No. 43.) The Court previously stayed this case pending the resolution of the defendant's motion to enforce a class settlement and release filed in the United States District Court for the Middle District of Georgia. In the motion to enforce, the defendant asked the Georgia court to enjoin the prosecution of this case pursuant to a settlement agreement in *McBride v. Life Insurance Co. of Virginia*, No. 4:00-cv-217-3 (M.D. Ga. 2000). On March 15, 2019, the Georgia court granted the defendant's motion and enjoined the plaintiff from pursuing its claims here.

The plaintiff reports that it will appeal the Georgia court's decision to the United States Court of Appeals for the Eleventh Circuit. The plaintiff says that dismissing this case without prejudice would create a "statute-of-limitations windfall" for the defendant, so it asks the Court to extend the stay during the pendency of the plaintiff's appeal or until the parties resolve this litigation. (Dk. No. 44, at 4.) The defendant opposes an extended stay, instead asking the Court to either (1) dismiss this case without prejudice to the plaintiff's right to refile and to relate back

to the original filing date if a final appellate court decision vacates the injunction, or (2) impose an extended stay that will terminate with a dismissal with prejudice if the injunction is upheld.

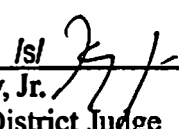
The defendant's first proposed approach adequately addresses the plaintiff's concerns regarding a limitations windfall and avoids the disfavored outcome of an indefinite stay. *See Diedrich v. City of Newport News*, No. 4:15cv2, 2016 WL 3002410, at *1 (E.D. Va. May 20, 2016) (noting that "motions to stay are disfavored in the Fourth Circuit"). Accordingly, the Court DENIES the plaintiff's motion to extend the stay and ORDERS as follows:

1. The Court LIFTS the stay in this case.
2. The Court DISMISSES this case WITHOUT PREJUDICE, with leave for the plaintiff to refile its amended complaint only if a final appellate court decision vacates the injunction and reverses the Georgia court's decision.
3. If a final appellate court decision vacates the injunction and the plaintiff refiles its amended complaint, the refiled amended complaint will relate back to the original filing date of September 19, 2018, for statute-of-limitations purposes.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 8 April 2019
Richmond, VA

 _____ John A. Gibney, Jr. United States District Judge
